

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 3, 1991

ALL COUNTY LETTER NO. 91-31

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: CLIFT v. McMAHON: TREATMENT OF VETERANS ADMINISTRATION (VA) AID AND ATTENDANCE PAYMENTS IN THE IHSS PROGRAM

REFERENCE: ACL NO. 80-10, MPP 30-763.3

BACKGROUND

On November 30, 1990, the Superior Court of the State of California for the County of San Mateo issued a Peremptory Writ of Mandate in the Clift v. McMahon court case. This Writ instructs the Department to cease counting Veterans Administration (VA) Aid and Attendance payments as an alternative resource in the In-Home Supportive Services (IHSS) Program.

Subsequently, on February 1, 1991, the Court issued a Stipulation and Order which provided more detailed instructions. A copy of the Stipulation and Order is enclosed.

The purpose of this All-County Letter (ACL) is to implement the policy change required by this court decision, and to replace and supersede ACL NO. 80-10 dated February 6, 1980.

IHSS POLICY CHANGE DESCRIPTION

Counties are hereby instructed that, effective January 1, 1991, VA Aid and Attendance payments shall no longer be treated as an alternative resource available to offset a recipient's IHSS. Thus, these payments are to be neither counted as income, nor treated as an alternative resource in the IHSS Program. All cases are to be reviewed for applicability of this policy.

For ongoing cases, the case review may be done on a flow basis no later than the time of the next reassessment. Affected recipients shall be issued a refund equal to the total amount of VA Aid and Attendance payments counted as an alternative resource from January 1, 1991 to the time the payment is being issued. These refunds are to be issued no later than 60 days after the next reassessment.

INCOME ELIGIBLE BUDGETING

Any retroactive IHSS payments made pursuant to this ACL are to be excluded from countable income and excluded from countable resources until the first day of the second month following the month of receipt. For example, a retroactive IHSS payment received any date in June 1991 will be excluded from income and will be excluded from resources until August 1, 1991. At that time, any unspent portion of the payment shall count toward the applicable resource limit.

Please note that there has been no change in the policy of excluding VA Aid and Attendance payments from countable income when calculating a share of cost for an Income Eligible recipient. To determine the portion of the VA check which is attributable to VA Aid and Attendance, the Veterans' Benefits Verification and Referral form (CA 5) can be sent to the local VA office.

CMIPS PROCEDURES

CMIPS instructions for the completion of the SOC 293, SOC 311, SOC 312, and Notice of Action (NOA) needed for the processing of Clift v. McMahon refunds are attached.

CERTIFICATION OF COUNTY IMPLEMENTATION

Counties must return the attached certification form to provide verification to the Department that they are implementing the revised policy to no longer treat VA Aid and Attendance payments as an alternative resource in the IHSS Program.

If you have any program questions, please contact Marshall Browne, of the Adult Services Branch, at (916) 445-3667. CMIPS questions should be directed to Roberta Christensen at (916) 323-6341.

Sincerely,



LOREN D. SUTER
Deputy Director
Adult and Family Services

cc: CWDA

Enclosures

State of California
Health and Welfare Agency

Department of Social Services

IMPLEMENTATION OF POLICY CHANGE

RESULTING FROM

Clift v. McMahon

The County of _____, State of California, has issued instructions to social services staff to effectuate the policy change made as a result of the recent Clift v. McMahon court decision, to no longer treat Veterans Administration Aid and Attendance payments as an alternative resource. In implementing the policy change, instructions were to make this change effective January 1, 1991 for all new cases, and retroactive to January 1, 1991 for all ongoing cases, the recalculation to be done no later than the time of the next reassessment, and any resultant refund due to be issued no later than 60 days after the next reassessment.

Director's Name (print or type)

Date

Director's Signature

Return to:

Marshall Browne
Department of Social Services
Adult Services Branch
744 P Street, MS 6-536
Sacramento, CA. 95814

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7 Attorneys for Respondents

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO
10

11 GERALDINE CLIFT and DON HELBUSH,
12 Petitioners,

13 v.

14 LINDA McMAHON, Director of the California
Department of Social Services; CALIFORNIA
15 DEPARTMENT OF SOCIAL SERVICES,
16 Respondents.

No. 352667

STIPULATION AND ORDER

18 WHEREAS Petitioners have moved for further relief in light of the
19 Court's November 30, 1990, Order and Writ; and

20 WHEREAS Respondents have substantially complied with said Order and
21 Writ, and have filed two Returns thereto; and

22 WHEREAS all parties desire to expeditiously and fairly conclude this
23 litigation;

24 THEREFORE, it is STIPULATED by and between all parties that:

25 1. Respondents shall further comply with the peremptory writ of
26 mandate issued from this Court on November 30, 1990, as follows:

27 a. Effective January 1, 1991, Respondents shall cease treating

FEB -1 1991

FILED

SUPERIOR COURT COUNTY CLERK

JANIE O'CONNOR

COUNTY CLERK

1 Veterans Administration Aid and Attendance payments as alternative resources in the
2 In-Home Supportive Services Program, or if such Aid and Attendance payments are
3 treated as alternative resources, respondents shall cease reducing IHSS recipients' hours
4 by an amount corresponding to any Aid and Attendance payments, except that
5 respondents may reduce IHSS hours only to the extent that respondents deduct any
6 Aid and Attendance payments from recipients' IHSS share of cost.

7 b. On or before February 5, 1991, Respondents shall inform all
8 California county welfare departments by speed letter or FAX that effective January 1,
9 1991, they may not treat Veterans Administration Aid and Attendance payments as
10 alternative resources in the In-Home Supportive Services Program.

11 c. On or before March 1, 1991, Respondents shall issue an All
12 County Welfare Directors Letter, informing the Counties of this Court's Peremptory
13 Writ of Mandate and the terms of this Stipulation and Order, and advising the
14 Counties that: (1) effective November 30, 1990, they were ordered to cease treating
15 Veterans Administration Aid and Attendance payments as alternative resources in the
16 IHSS program without reducing recipient's share of cost, (2) effective January 1, 1991,
17 they may not treat Veterans Administration Aid and Attendance payments as
18 alternative resources in the In-Home Supportive Services Program, (3) they shall review
19 all IHSS cases open effective January 1, 1991, no later than the next annual
20 reassessment, to determine whether Aid and Attendance payments have been treated
21 as alternative resources without reducing recipients' share of cost, and (4) they shall
22 provide all recipients whose Aid and Attendance payments have been treated as
23 alternative resources without reducing their share of cost after January 1, 1991 with
24 refunds equal to the amount of the V.A. Aid and Attendance payments counted as an
25 alternative resources subsequent to December 31, 1990, no later than 60 days after the
26 next annual reassessment.


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1 2. Respondents waive their right of appeal in connection with the
2 Court's November 30, 1990, Writ and Order as well as this Stipulation and Order.

3 3. Petitioners shall recover attorneys' fees and costs for their work in
4 connection with this Stipulation and Order, pursuant to California Welfare and
5 Institutions Code section 10962, the amount to be determined on noticed motion in the
6 event that the parties are unable to reach a stipulated settlement.


7 DATED: January 30, 1991

DANIEL E. LUNGREN
Attorney General

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11 HARLAN E. VAN WYE
12 Deputy Attorney General
13 Attorneys for Respondents

14 DATED: January 30, 1991

LEGAL AID SOCIETY OF
SAN MATEO COUNTY

15 
16 FRANK A. LALLE, ESQ.
17 Attorneys for Petitioners

18 ORDER

19 IT IS SO ORDERED

20 DATED: FEB - 1 1991

21 LAWRENCE T STEVENS
22 JUDGE OF THE SUPERIOR COURT
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CLIFT V. MCMAHON CASE MANAGEMENT, INFORMATION AND PAYROLLING
SYSTEM (CMIPS) INSTRUCTIONS

To comply with the terms of the Clift v. McMahon court order, the instructions below are to be followed in processing refunds to recipients whose VA Aid and Attendance payments were treated as an alternative resource in the IHSS Program on or after January 1, 1991.

Adjustments cannot automatically be made through the CMIPS because the affected cases have no VA Aid and Attendance indicator. It will be necessary to identify and subtract out alternative resource hours per service included on the assessment grid that were attributable to Aid and Attendance payments. Entry of an assessment change will generate a Notice of Action to advise recipients of the changes; however, blanks on the Notice of Action will need to be completed prior to mailing to the recipient.

Underpayment adjustments must be calculated on a case-by-case basis to pay affected recipients for these alternative resource hours that should have otherwise been paid as authorized service hours. The full cost of the difference in hours is to be paid. A SOC 312 In-Home Supportive Services Special Pre-Authorized Transactions must be completed and entered into CMIPS to generate a warrant, as appropriate, to the recipient.

CMIPS program modifications will be completed by the first week of March 1991 for implementation of an additional NOA message and the SOC 312 special underpayment adjustment codes.

SOC 293:

Change the affected alternative resource entries on the assessment grid lines AA through YY. Also, data entries will be needed to Fields ZZ2 and ZZ3:

- o Lines AA - YY Alternative Resources column - the difference in hours based on the conversion of the Aid and Attendance payment divided by the County hourly wage rate used. Enter the corrected Alternative Resources which may now be 0.

- o Field ZZ2 Rsn. CD. - enter Reason Code 570 specific to implementation of this change.
 - The NOA reason code 570 wording is found below under Notice of Action.
- o Field ZZ3 Beginning Date - enter a Beginning Date which is a future date, i.e., 04/01/91.
 - The effective day of the CMIPS change is a future date to avoid payment of erroneous timesheets.

On the TAD SOC 293 the following data modifications will occur:

- o Field L1 Hours will be changed to reflect the increased authorized hours of service.
- o Line M will display a corrected eligibility segment:
 - Field M2 Beginning Date will be a future date, i.e., 04/01/91.
 - Field M4 Gross Amount will change to reflect the increased gross amount of cost.
 - Field M5 Hours will change to reflect the increased authorized hours of service.
- o Line R NOA Message will display at least two changes:
 - NOA message numbers 371 and 570.
- o The Assessment Grid AA through YY will reflect additional hours in the Authorized to be Purchased Column.
- o Field ZZ1 NOA will show a "C" for Notice of Action returned to the County for completion.
- o Field ZZ3 Beginning Date will be a future date, i.e., 04/01/91.
- o Line aa will display new Purchase Hours (6).

SOC 311:

Effective January 1, 1991 eligibility segments for providers must also be changed to reflect increased authorized hours of service.

SOC 293 changes described above will make automatic updates if there is a one recipient/one provider indicator in Field E3 # of Prov. including:

- o Field F2 Beginning Date shall be a future date, i.e., 04/01/91.

- o Field F4 Hours updated to match the recipient hours in the SOC 293 Field M5 Hours.

SOC 311s that must be manually changed - most likely due to more than one provider - must have data changes on all affected provider documents:

- o Field F2 Beginning Date shall be a future date, i.e., 04/01/91.
- o Field F4 Hours on multiple SOC 311s shall be equal to the recipient Hours in the SOC 293 Field M5 Hours.

Notices of Action:

A Notice of Action (NOA) must be sent to all recipients affected by this change. The NOA will advise the recipient of the increase in authorized hours of service as well as the amount of the underpayment adjustment. All underpayment adjustments will be at the rate used by the County to convert Aid and Attendance dollars to hours. The result should equal the amount of the VA Aid and Attendance payments. Use the following message. The service worker will need to fill in the blanks.

570. MPP 30-763.3 Effective January 1, 1991, VA Aid and Attendance payments may not be used to offset IHSS authorized service hours.

To compensate you for the hours of service not authorized or paid, due to the improper treatment of your VA Aid and Attendance payments during _____ through _____, _____ through _____, we will send you an underpayment adjustment of \$ _____ which is _____ hours per month times the hourly wage of \$ _____.

If NOA Code 570 is used in concert with reduction of alternative service hours on the AA to YY assessment grid, then message 371 will automatically print on the NOA to explain the changes in hours that will be displayed on the NOA:

371. Alternative resources available to you for _____, _____, _____ have been reduced. MPP 30-763.3.

SOC 312:

Please review your case record files to determine what underpayments are due to the recipient. UNDERPAYMENTS ARE TO BE MADE TO RECIPIENTS ONLY. Enter the following data:

Recipient:

Field 1 Number - Required

- o Enter the 2 digit County number, 7 digit recipient number and 1 digit check digit.

Supplement/Emergency:

Field 3 Type - Required

- o Enter X - which indicates no employee tax deductions.

Field 4 Reason - Required

- o Enter code 16 - which indicates a Clift v. McMahon refund of alternative resources paid by Aid and Attendance payment.

Field 6 From Date - Required

- o Enter the beginning date of the underpayments.

Field 7 To Date - Required

- o Enter the end date of the underpayment.

Field 8 Gross - Required

- o Enter the gross dollar/cents amount of the underpayment.

Field 9 Hours - Required

- o Enter the number of hours included in the underpayment.

Field 10 Rate - Required

- o Enter the hourly base rate used by the County to convert Aid and Attendance dollars to hours.

Authorized By:

Field 35 - Number - Required

- o Enter the County authorization number.

Void Warrant Transactions:

If, for any reason, a recipient underpayment warrant must be voided, follow the Void Warrant Transactions instructions in the CMIPS User's Manual with one exception:

Field 18 Reason - Required

- o Enter code 16 which will identify that a Clift v. McMahon underpayment warrant has been voided.

Adjustment Transaction - Refund Adjustment

If an underpayment warrant is refunded to the County, follow the Refund Warrants to Counties instructions in the CMIPS User's Manual with one exception:

Field 23 Reason - Required

- o Enter Code 16 which will identify that a Clift v. McMahon underpayment warrant has been refunded.